

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

**HENSHAW**

PCT/GB97/00800 designating the U.S.

Filing Date: March 21, 1997

FOR: RODENTICIDE

\* \* \*

September 10, 1999

**PETITION UNDER 37 CFR 1.137(b)**

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Sir:

Applicant petitions the Commissioner to revive the above-referenced international application because delay in filing a national stage application in the U.S. Patent and Trademark Office (USPTO) (i.e., failure to prosecute by entering the national phase prior to abandonment of the international application) was unintentional. In the interest of justice, Applicant respectfully requests that this petition be granted so that copendency can be established and examination of the claims in the continuation application can proceed with a priority date of March 27, 1996.

The priority date claimed by the international application is March 27, 1996. It was Applicant's intention to enter the U.S. national phase under Chapter I. Therefore, the international application became abandoned on November 27, 1997 because the requirements under 35 U.S.C. 371 for entry into the national stage had not been satisfied within 20 months after the priority date of March 27, 1996. Applicant petitions to revive the international application under 37 CFR 1.137(b), and thereby establish copendency with the continuation application submitted herewith, because failure to prosecute by entering

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the national phase or filing a continuation application in the USPTO prior to abandonment of the international application was unintentional.

The Applicant and sole inventor of the present invention, Joseph H. Henshaw, suffered badly from arthritis and was hospitalized for about three months in late 1997. He was in no position to provide instructions to enter the national stage in the USPTO on or about the deadline of November 27, 1997.

The Assignee of the present invention, Delmar Products Ltd., was also unable to provide instructions to enter the national stage in the USPTO on or about the deadline of November 27, 1997. Around the time when entering the national stage application under 35 U.S.C. 371 or filing a continuation application under 35 U.S.C. 120 was due, instructions from the Assignee could not be obtained because of a legal action against Gary Marston, a director of the Assignee, and the resulting shortage of funds and chaos in the handling of the affairs of Delmar Products Ltd.

Thus, the undersigned did not receive instructions from the inventor, the Assignee, or an agent of the inventor or Assignee that the national phase should be entered or a continuation application should be filed in the USPTO by the deadline of November 27, 1997.

Because the international application became abandoned due to failure to enter the national stage or file a continuation application in the USPTO, a Notice of abandonment was not received from the USPTO. Thus, the undersigned did not petition to revive the present application within one year of the date of abandonment because no Notice of abandonment would have been issued from the USPTO under these circumstances.

On September 2, 1999, an agent of the Assignee contacted the undersigned to inquire whether an application could be filed in the USPTO claiming a priority date of

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March 27, 1996. The undersigned responded to the inquiry by explaining that a petition to revive the abandoned international application could be submitted if sufficient facts existed to show that failure to prosecute by entering the national phase or filing a continuation application in the USPTO and, therefore, the abandonment of the international application were unintentional. The above chronology of events and explanation for why the national phase was not entered or a continuation application was not filed in the USPTO by November 27, 1997 was provided by the Assignee's agent to show that the entire delay was unintentional.

The filing of a continuation application is submitted to constitute the reply required under 37 CFR 1.137(b)(1).

The petition fee set forth in Rule 17(m) and required under 37 CFR 1.137(b)(2) is submitted herewith. However, if this fee is deemed insufficient to consider the present petition, the Patent Office is authorized to charge the missing or additional fee to our deposit account no. 03-03975, order no. 81816/254839. A duplicate copy of this paper is attached to insure proper crediting and/or debiting of our deposit account.

As explained above, the entire delay in filing the required reply from November 27, 1997 to the present date was unintentional in accordance with 37 CFR 1.137(b)(3).

Finally, in the present case, a terminal disclaimer is not considered to be required under 37 CFR 1.137(b)(4) because the continuation application filed as the required reply claims priority from the present application and has a filing date after June 8, 1995 (i.e., September 13, 1999). If the Commissioner should require filing a terminal disclaimer, however, Applicant would be prepared to make the necessary dedication to the public of a terminal part of the term of any patent granted equivalent to the period of abandonment. If

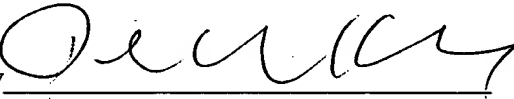
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this is deemed to be necessary, Applicant respectfully requests that the requirement for a terminal disclaimer include a calculation of the term to be disclaimed.

A favorable decision on this petition is earnestly requested. If further information is required, the Patent Office is invited to contact the undersigned.

Respectfully submitted,

Cushman Darby & Cushman  
Intellectual Property Group of  
PILLSBURY MADISON & SUTRO, L.L.P.

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